

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 1362

INTRODUCER: Health Care Committee and Senator Atwater

SUBJECT: Nursing Services/Operating Rooms

DATE: March 30, 2006 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Wilson	HE	Fav/CS
2.			HA	
3.				
4.				
5.				
6.				

I. Summary:

Each hospital must meet the requirements of the Medicare and Medicaid Conditions of Participation for Hospitals under 42 C.F.R. s. 482.51(a)(3) and the interpretive guidelines regarding registered nurses performing circulating duties in the operating room. A circulating nurse must be present in the operating room for the duration of a surgical procedure.

The bill amends s. 395.0191, F.S.

II. Present Situation:

Centers for Medicare and Medicaid Services

The Centers for Medicare and Medicaid Services (CMS) is the federal agency that administers the Medicare, Medicaid, and Child Health Insurance Programs. If a hospital is going to receive payments from the Medicaid and Medicare programs, it must be in compliance with the federal requirements set forth in the Medicare Conditions of Participation, in 42 CFR Part 482. The Conditions of Participation state that:

- Hospitals must have an organized nursing service that provides 24-hour nursing services. The services must be furnished or supervised by an RN.
- The operating room must be supervised by an experienced RN or a doctor of medicine or osteopathy.
- Licensed practical nurses (LPNs) and surgical technologists (or techs) may serve as “scrub nurses” under the supervision of an RN.
- Qualified RNs may perform circulating duties in the operating room.
- LPNs and surgical techs may assist in circulatory duties under the supervision of a qualified RN who is immediately available to respond to emergencies.

Under the interpretive guidelines set forth by CMS, §482.51(a)(3), the supervising RN must be inside the operating suite. The supervising RN would not be considered immediately available if the RN was located outside the operating suite or engaged in other activities/duties, which would prevent the RN from immediately intervening and assuming whatever circulating activities/duties were being provided, by the LPN or techs. The hospital, in accordance with state law and acceptable standards of practice, must establish the qualifications required for RNs to perform circulating duties, and LPNs and techs who assist with circulating duties.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

The JCAHO Accreditation Manual for Hospitals does not require circulating nurses to be registered nurses or to be supervised by registered nurses. The position of JCAHO is that the determination of actual staffing is hospital specific. It is further their position that if a hospital determines that certified surgical techs have the necessary qualifications and competencies to perform their job responsibilities, and the applicable licensure law and regulations and/or certification is consistent with those responsibilities, then their obligation is fulfilled.

Operating Room Nursing Staff

Under ch. 464, F.S., the Department of Health and the Board of Nursing are responsible for licensing and regulating nurses. There are several roles performed by nurses in operating rooms in Florida.

Registered Nurse (RN) First Assistant

The registered nurse first assistant (RNFA) directly assists the surgeon, often directly opposite the surgeon at the operating table during a procedure. The RNFA duties, conducted under the supervision of the surgeon, can be as basic as tying sutures and knots and performing skin closures to assisting in complex surgical procedures. To practice as an RNFA, a nurse must first obtain certification as a perioperative nurse and then attend an RNFA program.

- A perioperative nurse must have a minimum of 2 full years and 2,400 hours of operating room practice as a registered nurse; and have been employed within the previous 2 years, either full-time or part-time as a registered nurse in an administrative, teaching, research, or general staff capacity in perioperative nursing.
- A certified RNFA must be certified as a perioperative nurse; must document 2,000 hours of practice in the RN first assistant role, with at least 500 hours in the past 2 years; must have attended a formal RNFA program; and have a bachelors degree in nursing.
- In Florida, a RNFA must attend one academic year or 45 hours of didactic instruction and 120 hours of clinical internship; be licensed as a registered nurse; be certified as a perioperative nurse; and hold a certificate from a recognized registered nurse first assistant program (s. 464.027, F.S.).

Scrub Nurse

The scrub nurse works directly with the surgeon within the sterile field, passing instruments, sponges, and other items needed during the surgical procedure. The sterile field is the area closely surrounding the operating table and the instrument tray. Surgical team members who work within the sterile field have scrubbed their hands and arms with special disinfecting soap and wear surgical gowns, caps, gloves, shoe covers, and eyewear. A scrub nurse position may be filled by an RN, an LPN, or a tech.

Circulating Nurse

The circulating nurse's duties are performed outside the sterile field. The circulating nurse is responsible for managing the nursing care within the operating room and performs such duties as prepping the patient, retrieving instruments, procedure documentation, dispensing medications, implementing an individualized care plan, and evaluating patient outcomes. The circulating nurse observes the surgical team from a broad perspective and assists the team to create and maintain a safe, comfortable environment. The circulating nurse makes sure each member of the surgical team performs in a united effort. Currently, Florida statute does not specify the professional requirements for circulating nurses. However, Florida hospitals are complying with federal Medicare Conditions of Participation interpretive guidelines and acceptable standards of practice.

Ambulatory Surgical Center Rule 59A-5.0085, F.A.C.

Florida hospitals, ambulatory surgical centers, and mobile surgical centers are licensed by the Agency for Health Care Administration. The agency has adopted rule 59A-5.0085, F.A.C., requiring ambulatory surgical centers to have a registered nurse serve as an operating room circulating nurse. The rule was adopted pursuant to s. 395.1055(1)(a), F.S., which states that the agency shall adopt rules to ensure that sufficient numbers and qualified types of personnel and occupational disciplines are on duty and available at all time to provide necessary and adequate patient care and safety. The agency has no such requirements for hospitals. Florida is one of seven states that do not have specific staffing requirements for hospital operating rooms.

III. Effect of Proposed Changes:

The bill amends s. 395.0191, F.S., relating to hospital staff membership and clinical privileges, to require a registered nurse licensed under part I of ch. 464, F.S., to serve as the circulating nurse meeting the requirements of the Medicare and Medicaid Conditions of Participation for Hospitals under 42 C.F.R. s. 482.51(a)(3). The bill also requires the registered nurse to perform the circulating duties according to the interpretive guidelines provided by the United States Department of Health and Human Services. The circulating nurse must be present in the operating room for the duration of a surgical procedure.

The effective date of this bill is July 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Hospitals would only incur an expense if they are currently using LPNs or techs as circulating nurses and would have to hire RNs because of this bill. However, it has been reported that all the hospitals are currently using RNs as their circulating nurses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Operating room is not defined.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
